

2014 Legislative Update
Prepared by Candace J. Heisler

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Domestic Violence

Penal Code 273.5 Now Includes Dating and Engaged Parties (Amending Penal Code §273.5)

The included relationships in Penal Code 273.5 (corporal injury to intimate) are expanded to include current and former dating and current and former engaged parties.

A “dating relationship” is defined in Penal Code §243(f)(10) as “frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement independent of financial considerations”. (AB 16)

Fee Replaces Fine in DV Sentencing Requirements Amending Penal Code §1203.097 and Welfare and Institutions Code § 18305)

Every person convicted of a domestic violence crime shall be assessed a fee of \$500 which is not a fine and cannot be reduced for time served. The court can reduce the fee for good cause based on a defendant’s inability to pay but must state its reasons on the record. 8% of the

moneys deposited in the county domestic violence programs special fund may be used for administrative costs. The fee may be collected by a collecting agency or the agency's designee after the termination of probation, whether probation is terminated by revocation or by completion of the term.

The county board of supervisors may request, on not more than a quarterly basis, an accounting of the special fund. (AB 139)

Stalking

Workplace Protections Now Extend to Victims of Stalking as well as Victims of Domestic Violence and Sexual Assault (Amending Labor Code §230, 230.1)

An employer is prohibited from taking adverse employment action against a victim of domestic violence, sexual assault, or stalking who takes time off from work to attend to issues arising as a result of the domestic violence, sexual assault, or stalking as long as the employee provides notice and documentation of the victimization. An employer is prohibited from discharging or in any manner discriminating or retaliating against an employee because of the employee's status as a victim of domestic violence, sexual assault, or stalking if the victim provides notice to the employer of the status or the employer has actual knowledge of the status.

An employee who is discharged, threatened with discharge, demoted, suspended, or otherwise discriminated or retaliated against by his or her employer for reasons related to their victimization is entitled to file a complaint with the Division of Labor Standards Enforcement of the Department of Industrial Relations.

An employee who is unlawfully discriminated or retaliated against in the terms and conditions of employment by an employer because the employee has taken time off to attend court, safety plan, obtain medical or mental health care, etc. is entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. An employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure or hearing is guilty of a misdemeanor.

The employer shall provide reasonable accommodations that may include the implementation of safety measures or procedures for a victim of domestic violence, sexual assault, or stalking.

"Domestic violence" means any of the types of abuse set forth in Family Code §6211. of the Family Code, as amended.

"Sexual assault" means any of the crimes set forth in Penal Code §§261, 261.5, 262, 265, 266, 266a, 266b, 266c, 266g, 266j, 267, 269, 273.4, 285, 286, 288, 288a, 288.5, 289, or 311.4.

"Stalking" means a crime set forth in Penal Code §646.9 or Civil Code §1708.7. (SB 400)

Sexual Assault

New Category for Rape and Sodomy (Amending Penal Code §§261 and 286)

Rape and sodomy now include situations in which the victim submits under the belief that the person committing the act is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce that belief.

This urgency legislation took effect September 10, 2013. (AB 65)

New Category for Oral Copulation and Sexual Penetration (Amending Penal Code §§288a and 289)

Oral copulation and sexual penetration against a person's will now include situations in which the victim submits under the belief that the person committing the act is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce that belief.

This urgency legislation took effect September 10, 2013. (AB 59)

Reimbursement for Sexual Assault Evidentiary Examinations. (Amending Penal Code §13823.95)

Costs incurred by a qualified health care professional, hospital, or other emergency medical facility for the examination of the victim of a sexual assault to gather evidence for possible prosecution shall be charged to the local law enforcement agency in whose jurisdiction the alleged offense occurred.

The local law enforcement agency may seek reimbursement from the California Emergency Management Agency or Office of Emergency Services, for the costs of those examinations in cases in which the victim does not participate in the criminal justice system.

The California Emergency Management Agency or Office of Emergency Services may use specific federal grant moneys to provide that reimbursement (through various provisions of the Violence Against Women Acts).

These provisions were due to sunset on January 1, 2014. This bill continues these provisions indefinitely. (SB 107)

Court Orders

Law Enforcement Shall Enter Emergency Protective Orders into the State Database System for Restraining and Protective Orders (Amending Family Code §6271 and Penal Code §646.91, and repealing Family Code § 6273)

A law enforcement officer who obtains an Emergency Protective Order (EPO) shall have the EPO entered into the computer database system in CLETS for protective and restraining orders maintained by the Department of Justice.

Former requirement that officers carry copies of the order while on duty is repealed. (AB 238).

Non Harassment Orders Valid for 5 Years and Renewable for 5 Years (Amending Code of Civil Procedure §527.6)

The current provisions for a non harassment order under Code of Civil procedure §527.6 are repealed as of July 1, 2014 and replaced by the newly revised §527.6 which is substantially the same as the old version except:

The injunction may be granted for up to 5 years, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. The order may be renewed, upon the request of a party, for a duration of not more than 5 additional years, without a showing of any further harassment since the issuance of the original order, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. A request for renewal may be brought at any time within the three months before the expiration of the order.

An order/injunction that does not state a date of expiration is valid for 3 years. (AB 499).

Changes to Enforcement of Multiple Inconsistent Orders (Amending Family Code §§3100, 6383, and 6405)

(Note: This bill is double joined with AB 307)

When confronted by how to enforce multiple inconsistent restraining or protective orders in domestic violence situations, the following rules will apply:

1. If there are multiple orders and one is an emergency protective order that takes precedence in enforcement pursuant to Penal Code §136.2, law enforcement shall enforce the emergency protective order (EPO).
2. If there is more than one order issued and none is an EPO, and one order is a no-contact order (as described in Family Code §6320), law enforcement shall enforce the no-contact order.
3. If more than one criminal order has been issued and neither an EPO nor a no-contact order has been issued, law enforcement shall enforce the order issued last.
4. If more than one civil order has been issued and neither an EPO nor a no-contact order has been issued, law enforcement shall enforce the order issued last.
5. If there are both civil and criminal orders issued and neither an EPO nor a no-contact order has been issued, law enforcement shall enforce the criminal protective order (subject to Penal Code §136.2(h) and (i)).

These same rules apply to foreign orders under Family Code § 6400 et seq.

Family Code §6320 defines a no-contact order as one which enjoins a party from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, making annoying telephone calls as described in Penal Code §653m, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the other party, and of other named family or household members.

Penal Code §136.2 authorizes a criminal court to issue a protective order in a domestic violence case based on the underlying nature of the offense charged, and the criminal record including prior acts of domestic violence, weapons offenses, and other violence, and current restraining and protective orders issues against the defendant.

Penal Code 136.2 further directs the court when sentencing a defendant for a domestic violence offense to consider issuing an order restraining the defendant from any contact with the victim for up to 10 years based on the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family.

An EPO takes precedence over other orders when: (i) The emergency protective order is issued to protect one or more individuals who are already protected persons under another restraining or protective order; (ii) The emergency protective order restrains the individual who is the restrained person in the other restraining or protective order; and (iii) The provisions of the emergency protective order are more restrictive in relation to the restrained person than are the provisions of the other restraining or protective order(s). An emergency protective order that meets these requirements shall have precedence in enforcement over any other restraining or protective order only with respect to those provisions of the emergency protective order that are more restrictive in relation to the restrained person. (Penal Code §136.2)

These changes become effective on July 1, 2014. (AB 176)

Changes to Criminal Court Protective Orders (Amending Penal Code §§136.2 and 166)

(Note: This bill is double joined with AB 176).

Like the provisions of AB 176, these provisions take effect on July 1, 2014.

An Emergency Protective Order (EPO) that meets the criteria listed in AB 176 (immediately above) shall take precedence over other civil and criminal restraining and protective orders.

If there is no EPO issued, a no-contact order shall have precedence in enforcement over any other restraining or protective order.

Prior law required the sentencing court in a domestic violence case to consider issuing an order restraining the defendant from any contact with the victim. The order may be valid for up to 10 years, as determined by the court. This protective order may be issued by the court regardless of whether the defendant is sentenced to the state prison or a county jail, or whether imposition of sentence is suspended and the defendant subdivision that the duration of any restraining order issued by the court be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family. These provisions are extended to cover persons convicted of rape under Penal Code §§ 261, 261.5, and 262 as well as any crime that requires the defendant to register as a sex offender under Penal Code §290(c). (AB 307)

Court in a Domestic Violence Proceeding May Issue Ex Parte Order Regarding Insurance or Other Coverage (Enacting Family Code §6325.5)

The court may issue an ex parte order restraining any party from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage held for the benefit of the parties, or their child or children for whom support may be ordered, or both.

This provision becomes effective on July 1, 2014. (AB 161)

Court Issuing Protective Order May Enjoin a Party From Personating Another Party (Amending Family Code §6320)

Effective July 1, 2014, the court may issue ex parte orders enjoining a party from credibly personating (as defined in Penal Code §528.5) or falsely personating (as defined in Penal Code §529) another party.

Penal Code §528.5 defines “credibly personating” as knowingly and without consent credibly impersonates another actual person through or on an Internet Web site or by other electronic means for purposes of harming, intimidating, threatening, or defrauding another person. An impersonation is credible if another person would reasonably believe, or did reasonably believe, that the defendant was or is the person who was impersonated.

Penal Code 529 defines false impersonation as falsely personating another in a private or official capacity, and in that assumed character does any of the following: (1) Becomes bail or surety for any party; (2) Verifies, publishes, acknowledges, or proves, in the name of another person, any written instrument, with intent that the same may be recorded, delivered, or used as true; or (3) Does any other act whereby, if done by the person falsely personated, might make that person liable to any suit or prosecution, or to pay any sum of money, or to incur any charge, forfeiture, or penalty, or whereby any benefit might accrue to the party personating, or to any other person. (AB 157)

Human Trafficking

Victim of Human Trafficking May Terminate Tenancy Before Lease Ends (Amending, Repealing and Enacting Civil Code §1946.7 and Amending Code of Civil Procedure §1161.3)

Like victims of domestic violence, sexual assault, stalking and elder and dependent adult abuse, a victim of human trafficking may notify a landlord that they intend to terminate the tenancy before the end of a lease or contract and shall attach documentation to the notice.

Until January 1, 2016 acceptable documentation includes a statement by the tenant and a health care practitioner, a domestic violence or sexual assault counselor, or a human trafficking caseworker indicating that the tenant is seeking assistance for physical or mental injuries or abuse resulting from the human trafficking; an emergency protective order, temporary restraining order or protective order protecting the tenant or other household members from human trafficking; or a copy of a written report by a law enforcement officer.

Effective January 1, 2016, acceptable documentation only includes an emergency protective order, temporary restraining order or protective order protecting the tenant or other household

members from human trafficking; or a copy of a written report by a law enforcement officer issued or written within the prior 180 days.

A landlord shall not disclose any information provided by the tenant to a third party unless with the tenant's written consent or when required by law or ordered by a court.

A landlord may terminate or decline to renew a tenancy after the tenant has availed him or herself of these remedies if the tenant allows the restrained party or subject of the law enforcement report to visit the property or the landlord reasonably believes the restrained party or subject of the law enforcement report poses a physical threat to other tenants, guests, invitees, or licensees, or to a tenant's right to quiet possession; and the landlord has previously given the tenant 3 days' notice to correct the violation.

The Judicial Council shall prior to July 1, 2014 develop or revise a form to be used by a party to assert these grounds as an affirmative defense in an unlawful detainer action. (SB 612)

Evidence of Acts of Commercial Sex By Trafficking Victim Inadmissible to Attack Character of Victim (Amending Evidence Code 1161)

Evidence that a victim of human trafficking has engaged in a commercial sexual act as a result of being a victim of human trafficking is inadmissible to prove the victim's criminal liability for the commercial sexual act.

Evidence of sexual history or history of any commercial sexual act of a victim of human trafficking, is inadmissible to attack the credibility or impeach the character of the victim in any civil or criminal proceeding. (AB 694)

Victims of Trafficking Eligible For Victim Compensation Benefits (Amending Government Code §§13955 and 13957)

Victims of trafficking (Penal Code §236.1) are eligible for compensation from the Restitution Fund for pecuniary losses due to physical or emotional injury, including medical and medical-related expenses and mental health counseling services. (SB 60).

Elder and Dependent Adults

POST Shall Develop Training For Law Enforcement Who Interact With Persons Living Within State Mental Health Hospitals and Developmental Centers: Changes to Elder and Dependent Adult Mandatory Reporting Laws (Enacting Penal Code §13515.30 and Amending Welfare and Institutions Code §15630)

By July 1, 2015 POST shall develop and continually update an education training course relating to law enforcement interaction with mentally disabled and developmentally disabled persons living within a state mental hospital or state developmental center. The training course shall be developed by the commission in consultation with appropriate community, local, and state organizations and agencies that have expertise in the area of mental illness and developmental disability, and with appropriate consumer and family advocate groups.

In developing the course, the commission shall also examine existing courses certified by the commission that relate to mentally disabled and developmentally disabled persons. The commission shall make the course available to all law enforcement agencies in California, and the course shall be required for law enforcement personnel serving in law enforcement agencies with jurisdiction over state mental hospitals and state developmental centers, as part of the agency's officer training program.

The course may consist of video-based or classroom instruction. The course shall include, at a minimum, core instruction in all of the following:

- (1) The prevalence, cause, and nature of mental illnesses and developmental disabilities.
- (2) The unique characteristics, barriers, and challenges of individuals who may be a victim of abuse or exploitation living within a state mental hospital or state developmental center.
- (3) How to accommodate, interview, and converse with individuals who may require assistive devices in order to express themselves.
- (4) Capacity and consent of individuals with cognitive and intellectual barriers.
- (5) Conflict resolution and de-escalation techniques for potentially dangerous situations involving mentally disabled or developmentally disabled persons.
- (6) Appropriate language usage when interacting with mentally disabled or developmentally disabled persons.
- (7) Community and state resources and advocacy support and services available to serve mentally disabled or developmentally disabled persons, and how these resources can be best utilized by law enforcement to benefit the mentally disabled or developmentally disabled community.
- (8) The fact that a crime committed in whole or in part because of an actual or perceived disability of the victim is a hate crime punishable under Penal Code §422.55 et seq.
- (9) Information on the state mental hospital system and the state developmental center system.
- (10) Techniques in conducting forensic investigations within institutional settings where jurisdiction may be shared.
- (11) Examples of abuse and exploitation perpetrated by caregivers, staff, contractors, or administrators of state mental hospitals and state developmental centers, and how to conduct investigations in instances where a perpetrator may also be a caregiver or provider of therapeutic or other services.

If a mandated reporter of elder or dependent adult abuse observes or is told of a suspected or alleged act of physical abuse and the abuse occurred in a long-term care facility, **except a state mental health hospital or a state developmental center**, the following shall occur:

If the suspected abuse results in serious bodily injury, a telephone report shall be made to the local law enforcement agency immediately, but also no later than within two hours of the mandated reporter observing, obtaining knowledge of, or suspecting the physical abuse, and a written report shall be made to the local ombudsman, the corresponding licensing agency, and the local law enforcement agency within two hours of the mandated reporter observing, obtaining knowledge of, or suspecting the physical abuse.

If the suspected abuse does not result in serious bodily injury, a telephone report shall be made to the local law enforcement agency within 24 hours of the mandated reporter observing, obtaining knowledge of, or suspecting the physical abuse, and a written report shall be made to

the local ombudsman, the corresponding licensing agency, and the local law enforcement agency within 24 hours.

When a local law enforcement agency receives an initial report of suspected abuse in a long-term care facility, the local law enforcement agency may coordinate efforts with the local ombudsman to provide the most immediate and appropriate response warranted to investigate the mandated report. The local ombudsman and local law enforcement agencies may collaborate to develop protocols to implement this subparagraph.

If the suspected or alleged abuse is abuse other than physical abuse, and the abuse occurred in a long-term care facility, **except a state mental health hospital or a state developmental center**, a telephone report and a written report shall be made to the local ombudsman or the local law enforcement agency. The local ombudsman and the local law enforcement agency shall, as soon as practicable, except in the case of an emergency or pursuant to a report required to be made pursuant to clause (v), in which case these actions shall be taken immediately, do all of the following:

- (i) Report to the State Department of Public Health any case of known or suspected abuse occurring in a long-term health care facility
- (ii) Report to the State Department of Social Services any case of known or suspected abuse occurring in a residential care facility for the elderly or in an adult day program
- (iii) Report to the State Department of Public Health and the California Department of Aging any case of known or suspected abuse occurring in an adult day health care center
- (iv) Report to the Bureau of Medi-Cal Fraud and Elder Abuse any case of known or suspected criminal activity.
- (v) Report all cases of known or suspected physical abuse and financial abuse to the local district attorney's office in the county where the abuse occurred.

If the suspected or alleged abuse or neglect occurred in a state mental hospital or a state developmental center, and the suspected or alleged abuse or neglect resulted in any of the following incidents, a report shall be made immediately, but no later than within two hours of the mandated reporter observing, obtaining knowledge of, or suspecting abuse, to designated investigators of the State Department of State Hospitals or the State Department of Developmental Services, and also to the local law enforcement agency:

- (I) A death.
- (II) A sexual assault, as defined in Section 15610.63.
- (III) An assault with a deadly weapon, as described in Section 245 of the Penal Code, by a nonresident of the state mental hospital or state developmental center.
- (IV) An assault with force likely to produce great bodily injury, as described in Section 245 of the Penal Code.
- (V) An injury to the genitals when the cause of the injury is undetermined.
- (VI) A broken bone when the cause of the break is undetermined.

A developmental center shall immediately, but no later than within two hours of the developmental center observing, obtaining knowledge of, or suspecting abuse, report the following incidents involving a resident to the local law enforcement agency having jurisdiction

over the city or county in which the developmental center is located, regardless of whether the Office of Protective Services has investigated the facts and circumstances relating to the incident:

- (A) A death.
- (B) A sexual assault, as defined in Section 15610.63.
- (C) An assault with a deadly weapon, as described in Section 245 of the Penal Code, by a nonresident of the developmental center.
- (D) An assault with force likely to produce great bodily injury, as described in Section 245 of the Penal Code.
- (E) An injury to the genitals when the cause of the injury is undetermined.
- (F) A broken bone when the cause of the break is undetermined.

If the incident is reported to the law enforcement agency by telephone, a written report of the incident shall also be submitted to the agency, within two working days.

The reporting requirements of this subdivision are in addition to, and do not substitute for, the reporting requirements of mandated reporters, and any other reporting and investigative duties of the developmental center and the department as required by law.

This section does not prevent the developmental center from reporting any other criminal act constituting a danger to the health or safety of the residents of the developmental center to the local law enforcement agency.

The department shall report to the agency described in §4900(i) any of the following incidents involving a resident of a developmental center:

- (A) Any unexpected or suspicious death, regardless of whether the cause is immediately known.
- (B) Any allegation of sexual assault, as defined in Section 15610.63, in which the alleged perpetrator is a developmental center or department employee or contractor.
- (C) Any report made to the local law enforcement agency in the jurisdiction in which the facility is located that involves physical abuse, as defined in Section 15610.63, in which a staff member is implicated.

A report shall be made no later than the close of the first business day following the discovery of the reportable incident.

The department shall annually provide written information to every developmental center employee regarding statutory and departmental requirements for mandatory reporting of suspected or known abuse; the rights and protections afforded to individuals' reporting of suspected or known abuse; the penalties for failure to report suspected or known abuse.; and the telephone numbers for reporting suspected or known abuse or neglect to designated investigators of the department and to local law enforcement agencies.

Other reports of suspected or alleged abuse or neglect that occurred in a state mental hospital or a state developmental center shall be made immediately, but no later than within two hours of the mandated reporter observing, obtaining knowledge of, or suspecting abuse, to designated investigators of the State Department of State Hospitals or the State Department of Developmental Services, or to the local law enforcement agency.

When a local law enforcement agency receives an initial report of suspected or alleged abuse or neglect in a state mental hospital or a state developmental center, the local law enforcement agency shall coordinate efforts with the designated investigators of the State Department of State Hospitals or the State Department of Developmental Services to provide the most immediate and appropriate response warranted to investigate the mandated report. The designated investigators of the State Department of State Hospitals or the State Department of Developmental Services and local law enforcement agencies may collaborate to develop protocols to implement this clause.

Except in an emergency, the local law enforcement agency shall, as soon as practicable, report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse.

If the abuse has occurred in any place other than a long-term care facility, a state mental hospital, or a state developmental center, the report shall be made to the adult protective services agency or the local law enforcement agency.

Note: This bill is double joined with AB 651. (AB 602)

New Rules for Reporting Suspected Abuse at a State Developmental Center (Amending Health and Safety Code §§1280.4 and 1418, and Enacting Health and Safety Code §1424.6; and Amending Welfare and Institutions Code §4427.5 and Enacting Welfare and Institutions Code §§ 4313.5)

A developmental center shall immediately report the following incidents involving a resident to the local law enforcement agency having jurisdiction over the city or county in which the developmental center is located, regardless of whether the Office of Protective Services has investigated the facts and circumstances relating to the incident:

(A) A death.

(B) A sexual assault, as defined in Welfare and Institutions Code §15610.63.

(C) An assault with a deadly weapon, as described in Penal Code §245, by a nonresident of the developmental center.

A developmental center's failure to report an incident that occurs in a distinct part long-term health care facility to local law enforcement a class B violation subject to certain penalties, as specified. If the incident occurs in the general acute care hospital or acute psychiatric hospital portion of the developmental center, a failure to immediately report the incident would be subject to a civil penalty of \$100 for each day the incident is not reported.

If a licensee of a health facility licensed under subdivision (a) or (b) of Section 1250 is required to, and fails to, immediately report an incident under subdivision (a) of Section 4427.5 of the Welfare and Institutions Code, the department may assess the licensee a civil penalty in the amount not to exceed one hundred dollars (\$100) for each day that the incident was not reported to law enforcement

Designated investigators of state hospitals shall request a sexual assault forensic medical examination for any resident of a state hospital who is a victim or reasonably suspected to be a victim of sexual assault, as defined in Welfare and Institutions Code §15610.63, performed at an

appropriate facility off the grounds of a state hospital, in accordance with state laws including the requirement that the law enforcement agency having jurisdiction over the city or county in which the state hospital is located be notified by the person performing the sexual assault forensic medical examination and that consent is obtained.

The sexual assault forensic medical examination may be performed at a state hospital by an independent sexual assault forensic examiner designated to perform examinations of victims of sexual assault in the jurisdiction of the state hospital only if it is deemed safer for the victim and the state hospital's examination facilities are equipped with forensic examination and evidence collection capability comparable to that of the designated community examination facility, as determined by the independent sexual assault forensic examiner.

Note: This bill is double joined with AB 602. This bill was chaptered last. (AB 651)

New Civil Penalties for Undue Influence and Financial Elder and Dependent Adult Abuse Amending Probate Code §§859 and 4231.5)

If a court finds that a person has in bad faith wrongfully taken, concealed, or disposed of property belonging to a conservatee, a minor, an elder, a dependent adult, a trust, or the estate of a decedent, or has taken, concealed, or disposed of the property by the use of undue influence in bad faith or through the commission of elder or dependent adult financial abuse, as defined in Section 15610.30 of the Welfare and Institutions Code, the person shall be liable for twice the value of the property recovered. The court, in its discretion may order payment of reasonable attorney's fees and costs.

If an attorney-in-fact breaches a duty, the attorney-in-fact is chargeable, as appropriate under the circumstances, with any loss or depreciation in value of the principal's property resulting from the breach of duty, with interest; any profit made by the attorney-in-fact through the breach of duty, with interest; and any profit that would have accrued to the principal if the loss of profit is the result of the breach of duty;

If a court finds that a person has in bad faith wrongfully taken, concealed, or disposed of property that belongs to a principal under a power of attorney, or has taken, concealed, or disposed of property that belongs to a principal under a power of attorney by the use of undue influence in bad faith or through the commission of elder or dependent adult financial abuse the person shall be liable for twice the value of the property recovered by an action to recover the property or for surcharge.

In addition, the person may, in the court's discretion, be liable for the prevailing party's reasonable attorney's fees and costs. These remedies are in addition to any other available remedies. (AB 381)

New Definition of Undue Influence for Probate Code Matters (Enacting Probate Code §86 and amending Welfare and Institutions Code §§15610.30 and 15610.70)

"Undue influence" means excessive persuasion that causes another person to act or refrain from acting by overcoming that person's free will and results in inequity. In determining whether a result was produced by undue influence, all of the following shall be considered:

- (1) The vulnerability of the victim, such as incapacity, illness, disability, injury, age, education, impaired cognitive function, emotional distress, isolation, or dependency, and whether the influencer knew or should have known of the alleged victim's vulnerability.
- (2) The influencer's apparent authority as evidenced by among other things, status as a fiduciary, family member, care provider, health care professional, legal professional, spiritual adviser, expert, or other qualification.
- (3) The actions or tactics used by the influencer including such things as controlling necessities of life, medication, the victim's interactions with others, access to information, or sleep; use of affection, intimidation, or coercion; initiation of changes in personal or property rights, use of haste or secrecy in effecting those changes, effecting changes at inappropriate times and places, and claims of expertise in effecting changes.
- (4) The equity of the result including such things as the economic consequences to the victim, any divergence from the victim's prior intent or course of conduct or dealing, the relationship of the value conveyed to the value of any services or consideration received, or the appropriateness of the change in light of the length and nature of the relationship. Evidence of an inequitable result, without more, is not sufficient to prove undue influence.

"Financial abuse" of an elder or dependent adult occurs when a person or entity does any of the following:

- (1) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.
 - (2) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.
 - (3) Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence, as defined in Section 15610.70.
- (b) A person or entity shall be deemed to have taken, secreted, appropriated, obtained, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, obtains, or retains the property and the person or entity knew or should have known that this conduct is likely to be harmful to the elder or dependent adult. (AB 140)

Long-Term Care Ombudsman Program Improvement Act Created and New Penalties for Interfering With a Lawful Act of the Ombudsman Program (Amending Welfare and Institutions Code §§ 9714, 9714.5, and 9732)

The Long-Term Care Ombudsman Program is authorized to solicit and receive funds, gifts and contributions to support the work and operations of the Program. Funds received from such efforts shall be deposited into the newly created Long-Term Care Ombudsman Improvement Act Account.

The office may form a foundation to receive tax-deductible contributions to support the Program. No gifts or contributions may be solicited or accepted if they might jeopardize the independence and objectivity of the office or foundation.

Willful interference with any lawful action of the office is subject to a civil penalty of up to \$2500.00 for each incident to be assessed by the director and shall be paid within 30 days of assessment. The director shall initiate an action to collect the penalties in the jurisdiction in which the facility is located if the assessment is not timely paid.

Each instance of willful interference may be reported to local law enforcement and the appropriate licensing agency as an act of isolation, as defined in Section 15610.43.

All civil penalties collected by the department pursuant to this section shall be deposited into the new Access to Facilities Account, within the Special Deposit Fund, to be available, upon appropriation, to the office to fund the training costs, and to reimburse the travel expenses, of local ombudsman programs throughout the state. (SB 609).

***Protections for Employees and Others Who Seek Inspection of Licensed Care Facilities
(Amending Health and Safety Code §§ 1539, 1568.07, and 1569.37)***

The Department of Social Services is responsible for licensing and regulating community care facilities, residential care facilities for persons with chronic, life-threatening illness, and residential care facilities for the elderly. Anyone, including an employee, can request that an inspection of a licensed facility for perceived licensing violations be conducted.

No licensee, or officer or employee of the licensee, shall discriminate or retaliate in any manner, including, but not limited to, eviction or threat of eviction, against any person receiving the services of the licensee's community care facility, or against any employee of the licensee's facility, on the basis, or for the reason that, the person or employee or any other person has initiated or participated in the filing of a complaint, grievance, or a request for inspection with the department or has initiated or participated in the filing of a complaint, grievance, or request for investigation with the local or state ombudsman.

It is a misdemeanor offense for a person without lawful authorization from a duly authorized officer, employee, or agent of the department, to inform an owner, operator, employee, agent, or resident of a residential care facility, of an impending or proposed inspection or evaluation of that facility by personnel of the department. The offense is punishable by a fine of up to \$1000.00, 6 months in jail, or both. (AB 581)

Changes to Fees and Charges that May Be Imposed Upon the Death of a Resident Living in a Residential Care Facility (Enacting Health and Safety Code §1569.652 and Amending §1569.884)

A residential care facility for the elderly shall not require advance notice for terminating an admission agreement upon the death of a resident. No fees shall accrue once all personal property belonging to the deceased resident is removed from the living unit.

Upon the death of a resident, a licensee shall not impede the removal of the resident's personal property from the facility during reasonable hours by an individual or individuals authorized by the resident or the resident's responsible person, as identified in the admission agreement or attachment, or by a court-appointed executor or administrator of the decedent's estate.

A refund of any fees paid in advance covering the time after the resident's personal property has been removed from the facility shall be issued to those contractually responsible for the fees or, if the deceased resident paid the fees, to the resident's estate, within 15 days after the personal property is removed.

If fees are assessed while a resident's personal property remains in a unit after the resident is deceased, a licensee shall, within three days of becoming aware of the resident's death, provide to the resident's responsible person, or other individual or individuals as identified in the admission agreement or attachment, written notice of the facility's policies regarding contract termination upon death and refunds.

The admission agreement shall include the facility's policy regarding refunds, including the conditions under which a refund for advanced monthly fees will be returned in the event of a resident's death. A violation of this section is a misdemeanor. (AB 261)

***New Training Requirements for Administrator for Care Facility and Ombudsman Staff
(Amending Health and Safety Code §§1562.3 and 1569.616 and Welfare and Institutions Code §9719)***

Training requirements for administrators of adult residential care facilities, residential care facilities for the elderly, and Long Term Care Ombudsman Program staff training requirements shall also include training in cultural competency and sensitivity in issues relating to the underserved aging lesbian, gay, bisexual, and transgender community. (AB 663)

New Licensing and Registration Requirements for Home Care Agencies and Aides (Enacting Health and Safety Code Chapter 13 (§1796.10 et seq))

The Home Care Services Consumer Protection Act is enacted which beginning January 1, 2015, provides for the licensure and regulation of home care organizations, as defined, by the State Department of Social Services, (SDSS) and the registration of home care aides. SDSS shall establish and continuously update a home care aide registry, providing certain information about home care aide applicants and registered home care aides.

Home care aides are required to demonstrate they are free of tuberculosis, complete a background clearance and submit to the Department of Justice a signed declaration under penalty of perjury regarding any prior criminal convictions

SDSS may revoke or deny a registered home care aide's registration or request for registration renewal if the registered home care aide engages in fraud or misrepresentation in the application or renewal process, makes or gives false information or a false statement, has a criminal conviction, unless an exemption is granted, engages or has engaged in an incident of abuse or neglect or other conduct that poses a threat to the health and safety of any person who is or may become a client, violates the Act or its rules or regulations, aids, abets, or permits the violation of the Act or its rules or regulations, engages or has engaged in conduct which is inimical to the health, morals, welfare, or safety of the people of the state or an individual receiving or seeking to receive home care services, and/or engages or has engaged in acts of financial malfeasance concerning a client, including, but not limited to, improper use or embezzlement of client moneys and property or fraudulent appropriation for personal gain of client moneys and property, or willful or negligent failure to provide services.

The registration is valid for 2 years.

SDSS shall establish and maintain on the department's Internet Web site the registry of registered home care aides and home care aide applicants and update the home care registry upon receiving notification from a home care organization that an affiliated home care aide is no longer employed by the home care organization.

Home care organizations shall be licensed. In order to obtain a home care organization license, the owner shall consent to a background examination. Unless licensed a person or entity may not represent himself, herself or itself to be a home care organization by name, advertising, soliciting, or any other presentments to the public, or in the context of services within the scope of this chapter, imply that he, she, or it is licensed to provide those services or to make any reference to employee bonding in relation to those services or use the terms "home care organization," "home care," "in-home care," or any combination of those terms, within its name.

An individual, partnership, corporation, limited liability company, joint venture, association, or other entity shall not arrange for the provision of home care services by a registered home care aide to a client in this state before obtaining a license.. This shall be deemed "unlicensed home care services." If a violation occurs the SDSS shall send a written notice of noncompliance to the individual or entity and assess a civil penalty of nine hundred dollars (\$900) per day for each calendar day of each violation and shall send a copy of the written notice of noncompliance to the individual or entity and to the Attorney General or appropriate district attorney or city attorney.

A home care organization licensee shall ensure that prior to providing home care services, an affiliated home care aide shall complete the training requirements prior to presence with a client including 2 hours of orientation training regarding his or her role as caregiver and the applicable terms of employment and 3 hours of safety training, including basic safety precautions, emergency procedures, and infection control. In addition the aide shall complete at least five hours of annual training in clients' rights and safety; meeting client daily living needs; how to report, prevent, and detect abuse and neglect; how to assist a client with personal hygiene and other home care services; and if transportation services are provided, how to safely transport a client.

SDSS shall impose various fees to be deposited in the newly created Home Care Fund. Fines and penalties collected for violations of provisions of the Act shall deposited into the Home Care Penalties Subaccount within the Home Care Fund.

The misdemeanor crimes of falsely representing or presenting oneself as a home care aide applicant or registered home care aide and willfully or repeatedly violating a rule or regulation promulgated under the Act are created. (AB 1217)

Children

Authority for Child Abuse Multidisciplinary Teams Made Permanent (Amending Welfare and Institutions Code §18961.7)

Counties are authorized to establish a child abuse multidisciplinary personnel team to allow provider agencies to share confidential information in order to investigate reports of suspected child abuse or neglect or for the purpose of child welfare agencies making detention

determinations. Members of the team, for 30 days, or longer if good cause exists, following a report of suspected child abuse or neglect, may disclose to and exchange with one another information and writings related to any incident of child abuse that are designated as confidential if the member of the team reasonably believes it is relevant to the prevention, identification, or treatment of child abuse.

Disclosure and exchange of information may occur telephonically and electronically if there is adequate verification of the identity of the multidisciplinary personnel who are involved in that disclosure or exchange of information.

These provisions were scheduled to sunset on January 1, 2014. These provisions are extended indefinitely by this legislation. (AB 406)

Guns and Other Weapons

Veteran With a Military-Related Condition Whose Conviction is Dismissed Is Prohibited From Possessing or Owning a Firearm (Amending Penal Code §1170.9)

A court, in the case of any person convicted of a criminal who alleges that he or she committed the offense as a result of sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems stemming from service in the United States military, must, prior to sentencing, make a determination whether defendant was, or currently is, a member of the United States military and whether the defendant may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of that service. If that defendant is in substantial compliance with conditions of probation and has successfully participated in court-ordered treatment and services, among other requirements, the court is authorized to grant certain relief, including a dismissal of the action.

A person who has been convicted of a felony, or who is addicted to the use of a narcotic drug, and who owns, purchases, receives, or has in possession or under custody or control any firearm is guilty of a felony.

Dismissal of an accusation, information, or conviction, pursuant to the provisions relating to a defendant who served in the United States military, does not authorize that defendant to own, possess, or have in his or her custody or control any firearm, or prevent his or her conviction for being a felon or drug addict in possession of a firearm. (SB 769)

Person Prohibited From Having a Firearm May Transfer the Weapon to a Licensed Gun Dealer For the Duration of the Prohibition (Amending Penal Code §§11106, 29810, 29825, 29850, and 33870, and enacting Penal Code §29830)

Anyone who is prohibited from owning or possessing a firearm may transfer a firearm(s) in his or her possession, or of which he or she is the owner, to a licensed firearms dealer for the duration of the prohibition if the prohibition on owning or possessing the firearm will expire on a date specified in a court order.

A firearms dealer who stores a firearm under these circumstances must notify the Department of Justice of the date that the dealer has taken possession of the firearm. The Attorney General shall maintain a record of this information.

Note: This bill is double joined with AB 500. This bill was chaptered last. (SB 539)

New Crime to Not Secure a Firearm Knowing That Another Person Residing in the Residence is Prohibited From Possessing a Firearm (Amending Penal Code §§ 11106, 16520, 16540, 16850, 23510, and 28220, and enacting Penal Code §§ 17060, 25135, and 28255)

A person 18 years of age or older, who is the owner, lessee, renter, or other legal occupant of a residence, who owns a firearm and who knows or has reason to know that another person also residing therein is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm shall not keep in that residence any firearm that he or she owns unless one of the following applies:

- (1) The firearm is maintained within a locked container.
- (2) The firearm is disabled by a firearm safety device.
- (3) The firearm is maintained within a locked gun safe.
- (4) The firearm is maintained within a locked trunk.
- (5) The firearm is locked with a locking device, which has rendered the firearm inoperable.
- (6) The firearm is carried on the person or within close enough proximity thereto that the individual can readily retrieve and use the firearm as if carried on the person.

A violation of this section is a misdemeanor. (Penal Code §25135(a))

The Department of Justice shall immediately notify a firearms dealer to delay the transfer of a firearm to a purchaser if the records of the department, or if other records available to the department, indicate that the purchaser has been taken into custody and placed in a facility for mental health treatment or evaluation, that he or she has been arrested for, or charged with, a crime, or that the purchaser is attempting to purchase more than one firearm within a 30-day period, and the department is unable to ascertain whether the purchaser is ineligible to possess, receive, own, or purchase the firearm as a result of the determination of the purchaser's mental health, the final disposition of the arrest or criminal charge, or whether the purchaser is ineligible to purchase the firearm because he or she is attempting to purchase more than one firearm within a 30-day period, prior to the conclusion of the 10-day waiting period.

If the Department of Justice is unable to determine the final disposition of the arrest or criminal charge, the outcome of the mental health treatment or evaluation, or whether the purchaser is ineligible to purchase the firearm because he or she is attempting to purchase more than one firearm within a 30-day period, within 30 days of the dealer's submission of purchaser information the department shall notify the firearms dealer who is then authorized to immediately transfer the firearm to the purchaser.

The dealer and the purchaser shall sign the register or record of electronic transfer and effective January 1, 2015, the dealer shall notify the department that the person in an application to purchase actually took possession of the firearm.

Note: This bill is double joined with AB 538. This bill was chaptered first. (AB 500)

Changes to Gun Transfer Laws (Amending Penal Code §§27540, 27875, 27880, 27920, 27925, 28160, 31620, and 31810 and amending, repealing and enacting Penal Code 26840, 31610, 31615, 31625, 31630, 31635, 31640, 31645, 31650)

Transfer rules under Penal Code §27545 do not apply when a firearm is transferred by gift, bequest, intestate succession, or other means from one individual to another who is at least 18 years of age, when the transfer is infrequent and between members of the same immediate family, and within 30 days of taking possession, the person to whom it is transferred forwards by prepaid mail, or personally delivers to the Department of Justice, a report that includes information concerning the individual taking possession of the firearm, how title was obtained and from whom, and a description of the firearm

Until January 1, 2015, the person taking title to the firearm shall first obtain a handgun safety certificate if the firearm is a handgun. Beginning January 1, 2015, a firearm safety certificate for any firearm, except that in the case of a handgun, an unexpired handgun safety certificate may be used.

Gun transfer rules under § 27545 do not apply to the loan of a firearm between persons who are personally known to each other when the loan is infrequent, is for a lawful purpose, and is not for more than 30 days.

A firearms dealer shall record on the register or record of electronic transfer the date that the firearm is delivered.

Note: This bill is double joined with AB 538. (AB 683)

New requirements for Entry of Information into the Automated Firearms Systems (Amending Penal Code §§ 26384, 26405, 27600, 28000, 28160, 28210, and 28215, and Enacting Penal Code §§26620, 27620, and 31835)

Exemptions from the licensing requirement regarding the sale, delivery, or transfer of a firearm now include those made by an authorized law enforcement representative of a city, county, city and county, or of the state or federal government, to a licensed firearms dealer, a wholesaler, or a licensed manufacturer or importer of firearms or ammunition, if certain requirements are met. If the authorized law enforcement representative sells, delivers, or transfers a firearm to a licensed firearms dealer, the governmental agency shall enter a record of the delivery into the Automated Firearms Systems (AFS) via CLETS within 10 days.

An agency that subsequently destroys a weapon shall enter information that the weapon has been destroyed into the AFS via the CLETS within 10 days of destruction.

Provisions requiring when neither party to a firearms transaction holds a dealer's license, the parties are required to complete the sale, loan, or transfer of that firearm through a firearms dealer, do not apply if the sale, delivery, or transfer is made by an authorized law enforcement representative of a city, county, city and county, or of the state or federal government if the sale, delivery, or transfer is made to a wholesaler, or a licensed manufacturer, or importer of

firearms or ammunition. The agency must enter a record of the delivery into the AFS via the CLETS within 10 days.

The register or record of an electronic or telephonic transfer of a firearm must include over 30 specified items of information, including waiting period exemptions, and requires the firearms dealer to record on the register or record the firearm's delivery date.. A violation of those provisions is a misdemeanor.

Note: This bill is double joined with SB 683. This bill was chaptered last. (AB 538)

Criminal Procedure

New Crimes for Which Prosecuting Witness Entitled to Support Persons and Court Practices to Enhance Comfort and Protection (Amending Penal Code §868.5 and 868.8)

The prosecuting witness in a case involving a violation or attempted violation of Penal Code §§187, 203, 205, 207, 209(b), 211, 215, 220, 236.1, 240, 242, 243.4, 245, 261, 262, 266, 266a, 266b, 266c, 266d, 266e, 266f, 266g, 266h, 266i, 266j, 266k, 267, 269, 273a, 273d, 273.5, 273.6, 278, 278.5, 285, 286, 288, 288a, 288.5, 288.7, 289, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.10, 311.11, 422, 646.9, or 647.6, former § 277 or 647a, 314(1), or 368(b), (d), or (e), is entitled, for support, to the attendance of up to two persons of his or her own choosing, one of whom may be a witness, at the preliminary hearing and at the trial, or at a juvenile court proceeding, during the testimony of the prosecuting witness.

One of those support persons may accompany the witness to the witness stand, although the other may remain in the courtroom during the witness' testimony. The support person shall testify before the prosecuting witness and the prosecuting witness shall be excluded from the courtroom while the support person gives testimony.

If the support person or persons is/are also witnesses, the prosecution shall present evidence that the person's attendance is desired by the prosecuting witness for support and will be helpful to the prosecuting witness.

Upon that showing, the court shall grant the request unless information presented by the defendant or noticed by the court establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony

The judge shall admonish the support person or persons to not prompt, sway, or influence the witness in any way. Nothing in this section shall preclude a court from exercising its discretion to remove a person from the courtroom whom it believes is prompting, swaying, or influencing the witness.

In any criminal proceeding in which the defendant is charged with a violation or attempted violation §§209(b), 220, 236.1, 243.4, 261, 269, 273a, 273d, 285, 286, 288, 288a, 288.5, 288.7, or 289, 314(1) , 422, 646.9, 647.6, or former Section 647a, or any crime that constitutes domestic violence defined in Section 13700, committed with or upon a person with a disability or a minor under 11 years of age, the court shall take special precautions to provide for the comfort and

support of the person with a disability or minor and to protect him or her from coercion, intimidation, or undue influence as a witness, including, but not limited to, reasonable periods of relief from examination and cross-examination during which he or she may retire from the courtroom, removal of the judge's robe, and relocation of the parties, witnesses, support persons, and court personnel within the courtroom to facilitate a more comfortable and personal environment, and/or limiting the taking of the testimony of the person with a disability or the minor to normal school hours. (SB 130)

Law Enforcement Shall Electronically Record Custodial Interrogations of Juveniles in Murder Cases (Enacting Penal Code §859.5 and Welfare and Institutions Code §628.5)

A custodial interrogation of a minor, who is in a fixed place of detention, and suspected of committing murder, shall be electronically recorded in its entirety. A statement that is electronically recorded in its entirety creates a rebuttable presumption that the electronically recorded statement was given and was accurately recorded.

"Electronic recording" means a video recording that accurately records a custodial interrogation.

"Fixed place of detention" means a fixed location under the control of a law enforcement agency where an individual is held in detention in connection with a criminal offense that has been, or may be, filed against that person, including a jail, police or sheriff's station, holding cell, correctional or detention facility, juvenile hall, or a facility of the Division of Juvenile Facilities.

Custodial interrogation" means any interrogation in a fixed place of detention involving a law enforcement officer's questioning that is reasonably likely to elicit incriminating responses, and in which a reasonable person in the subject's position would consider himself or herself to be in custody, beginning when a person should have been advised of his or her constitutional rights, including the right to remain silent, the right to have counsel present during any interrogation, and the right to have counsel appointed if the person is unable to afford counsel, and ending when the questioning has completely finished.

Electronic recordation of a custodial interrogation is required if any of these circumstances apply:

- (1) Electronic recording is not feasible because of exigent circumstances. The exigent circumstances shall be recorded in the police report.
- (2) The person to be interrogated states that s/he will speak to a law enforcement officer only if the interrogation is not electronically recorded. If feasible, that statement shall be electronically recorded. The requirement also does not apply if the person being interrogated indicates during interrogation that he or she will not participate in further interrogation unless electronic recording ceases. If the person being interrogated refuses to record any statement, the officer shall document that refusal in writing.
- (3) The custodial interrogation occurs in another jurisdiction and was conducted by law enforcement officers of that jurisdiction in compliance with the law of that jurisdiction, unless the interrogation was conducted with intent to avoid the requirements of this section.
- (4) The interrogation occurs when no law enforcement officer conducting the interrogation has knowledge of facts and circumstances that would lead an officer to reasonably believe that the

individual being interrogated may have committed murder. If during a custodial interrogation, the individual reveals facts and circumstances giving a law enforcement officer conducting the interrogation reason to believe that murder has been committed, continued custodial interrogation concerning that offense shall be electronically recorded.

(5) A law enforcement officer conducting the interrogation or the officer's superior reasonably believes that electronic recording would disclose the identity of a confidential informant or jeopardize the safety of an officer, the individual being interrogated, or another individual. An explanation of the circumstances shall be recorded in the police report.

(6) The failure to create an electronic recording of the entire custodial interrogation was the result of a malfunction of the recording device, despite reasonable maintenance of the equipment, and timely repair or replacement was not feasible.

(7) The questions presented to a person by law enforcement personnel and the person's responsive statements were part of a routine processing or booking of that person.

Electronic recording is not required for spontaneous statements made in response to questions asked during the routine processing of the arrest of the person.

If the prosecution relies on one of these exceptions to justify a failure to make an electronic recording of a custodial interrogation, the prosecution shall show by clear and convincing evidence that the exception applies.

A person's statements that were not electronically recorded may be admitted into evidence in a criminal proceeding or in a juvenile court proceeding, if the court finds **all** of the following:

(1) The statements are legally admissible.

(2) The prosecution has proven by clear and convincing evidence that the statements were made voluntarily.

(3) Law enforcement personnel made a contemporaneous audio or audio and visual recording of the reason for not making an electronic recording of the statements. This provision does not apply if it was not feasible for law enforcement personnel to make that recording.

(4) The prosecution has proven by clear and convincing evidence that one or more exceptions existed at the time of the custodial interrogation.

Unless the court finds that an exception applies, **all** of the following remedies shall be granted as relief for noncompliance:

(1) Failure to comply with any of the requirements of this section shall be considered by the court in adjudicating motions to suppress a statement of a defendant made during or after a custodial interrogation.

(2) Failure to comply with any of the requirements of this section shall be admissible in support of claims that a defendant's statement was involuntary or is unreliable, provided the evidence is otherwise admissible.

(3) The court shall provide the jury with an instruction, to be developed by the Judicial Council, which advises the jury to view with caution the statements made in that custodial interrogation.

The interrogating entity shall maintain the original or an exact copy of an electronic recording made of a custodial interrogation until a conviction for any offense relating to the interrogation is final and all direct and habeas corpus appeals are exhausted or the prosecution for that offense is barred by law or, in a juvenile court proceeding, until the person is no longer subject to the jurisdiction of the juvenile court unless that person is transferred to a court of criminal

jurisdiction. The interrogating entity may make one or more true, accurate, and complete copies of the electronic recording in a different format. (SB 569)

Proposition 115 Testimony May Be Provided By Qualified Law Enforcement Officer Employed By a Federal, State, or Local Government Agency (Amending Penal Code §872)

The probable cause finding at a preliminary hearing may be based on the sworn testimony of a law enforcement officer or honorably retired law enforcement officer relating the statements of declarants made out of court offered for the truth.

A law enforcement officer is any officer or agent employed by a federal, state, or local government agency who has either five years of law enforcement experience or who has completed a training course certified by the Commission on Peace Officer Standards and Training that includes training in the investigation and reporting of cases and testifying at preliminary hearings; and whose primary responsibility is the enforcement of any law, the detection and apprehension of persons who have violated any law, or the investigation and preparation for prosecution of cases involving violation of laws. (AB 568)

New Lawyer Referral Service-Client Privilege (Amending Evidence Code §912 and enacting Evidence Code §§965, 966, 967, and 968)

A person who consults an attorney referral service to retain a lawyer or secure legal advice from a lawyer has a legal privilege to refuse to disclose and prevent another from disclosing a confidential communication between the client and lawyer referral service.

The privilege is waived as to a communication if any holder of the privilege without coercion discloses a significant part of the communication or has consented to disclosure by another. The privilege is held by both the client, the client's guardian or conservator, and the personal representative of the client if the client is dead, and a successor, assignee, or trustee in dissolution or similar of an entity no longer in existence. Waiver by one holder does not affect the right of another joint holder to assert the privilege.

The legal referral service may not assert the privilege if there is no holder of the privilege in existence. There is no privilege if the services of the lawyer referral service were sought or obtained to enable or aid anyone to commit a crime or a fraud; or if the staff person of the referral service who received the communication believes the disclosure is necessary to prevent a criminal act likely to result in death to or substantial bodily harm to an individual. (AB 267)

Privilege to Refuse to Disclose Source of Information Includes Crime Stoppers Volunteers or Employees (Amending Evidence Code §1041)

A public entity has a privilege to refuse to disclose the identity of a person who has furnished information purporting to disclose a violation of a law of the United States or of this state or of a public entity in this state, and to prevent another from disclosing the person's identity, if the privilege is claimed by a person authorized by the public entity to do so.

The privilege extends to volunteers and employees of a crime stopper organization. A "crime stopper organization" is a private, nonprofit organization that accepts and expends donations

used to reward persons who report to the organization information concerning alleged criminal activity, and forwards the information to the appropriate law enforcement agency.

The informer may voluntarily disclose his or her identity. (AB 1250)

Sentencing

The Enhancement for Prior Petty Theft Convictions Now Includes Convictions for Elder and Dependent Adult Financial Abuse. (Amending Penal Code §666)

A person with 3 or more prior misdemeanor convictions for certain qualifying theft related offenses in which they served time in a penal institution, a person required to register as a sex offender, and a person convicted of a serious or violent felony who thereafter is convicted of petty theft may be sentenced to prison for a term of 16 months, 2 or 3 years (or up to a year in county jail). This bill expands the list of qualifying theft offenses to include elder or dependent adult financial abuse under Penal Code §368(d) and (e). (SB 543)

Victim Rights and Compensation

Confidential Address Program Application May be Completed at Community Program Serving Victims of Elder and Dependent Adult Abuse (Amending Government Code §§6206 and 6208.5)

Victims of domestic violence, stalking, and sexual assault may now apply for admission to the Secretary of State's Office Confidential Address Program at community based programs that serve victims of elder and dependent adult abuse.

The Secretary of State's Office shall designate state and local agencies and non-profit organizations that provide shelter and counseling services to victims of domestic violence, sexual assault and stalking as well as agencies that serve victims of elder and dependent adult abuse pursuant to the Elder Abuse and Dependent Adult Civil Protection Act (Welfare and Institutions Code §15600 et seq.) to assist victims seeking to participate in the program. (AB 849)

Miscellaneous

Public Agency Cannot Take Punitive Action Against Officer Because Officer's Name Placed on a "Brady List" (Enacting Government Code §3305.5 in the Public Safety Officers Procedural Bill of Rights)

No punitive action or denial of promotion on grounds other than merit may be taken against a public safety officer solely because that officer's name is placed on a "Brady list" or is subject to disclosure under Brady v. Maryland (1963) 373 US 83. (Brady v. Maryland requires the prosecution to disclose to the defense in a criminal case any evidence that exculpates the defendant, mitigates sentence, or reduces the degree culpability. Evidence that a public safety officer was dishonest or deceitful is included in this category).

The public safety officer is subject to disciplinary, punitive, or personnel action for the underlying acts that resulted in his or her name being placed on a Brady list or being subject to disclosure under Brady v. Maryland.

Evidence that a public safety officer's name was placed on a Brady list may only be introduced if, during the administrative appeal of a punitive action against an officer, the underlying act or omission for which that officer's name was placed on a Brady list is proven and the officer is found to be subject to some form of punitive action.

If the hearing officer or other administrative appeal tribunal finds or determines that a public safety officer has committed the underlying acts or omissions that will result in a punitive action, denial of a promotion on grounds other than merit, or other adverse personnel action, and evidence exists that a public safety officer's name has been placed on a Brady list, or may otherwise be subject to disclosure pursuant to Brady v. Maryland, then the evidence shall be introduced solely to determine the type or level of punitive action to be imposed.

"Brady list" means any system, index, list, or other record containing the names of peace officers whose personnel files are likely to contain evidence of dishonesty or bias, which is maintained by a prosecutorial agency or office in accordance with the holding in Brady v. Maryland . (SB 313)

Limitation on Use of Deceased Person's Photograph Taken By or For the Coroner (Amending Code of Civil Procedure §129)

A copy, reproduction, or facsimile of any photograph, negative, or print, including instant photographs and video recordings, of the body, or any portion of the body, of a deceased person, taken by or for the coroner at the scene of death or in the course of a post mortem examination or autopsy, shall not be made or disseminated except: (1) for use in a criminal action or proceeding in this state that relates to the death of that person; (2) As a court of this state permits, by order after good cause has been shown and after written notification of the request for the court order has been served, at least five days before the order is made, upon the district attorney of the county in which the post mortem examination or autopsy has been made or caused to be made.

These provisions do not apply to the making or dissemination of a copy, reproduction, or facsimile for use in the field of forensic pathology, in medical or scientific education or research, or by a coroner or any law enforcement agency in the United States for investigative purposes, including identification and identification confirmation. (AB 957)

Crime to Use Symbol or Term Implying Governmental, Military or Veteran Approval or Endorsement of Financial or Other Product, Goods or Services (Amending Business and Professions Code §17533.6)

It is unlawful for any person, firm, corporation, or association that is a nongovernmental entity to use a seal, emblem, insignia, trade or brand name or other term, symbol or content that reasonably could be construed as implying any governmental, military or veteran entity or service organization connection, approval, or endorsement of any product or service, including

financial goods, services, or product, by any means including mail, electronic transmission, Internet web site, periodical, or television commercial.

Violations are misdemeanors punishable by up to 6 months in jail, a \$2500.00 fine, or both. An injured party may also seek civil redress and may recover damages in an amount equal to three times the solicited amount.

A person, firm, corporation, or association that is a nongovernmental entity may advertise or promote an event, presentation, seminar, workshop or other gathering using a seal, emblem, insignia, trade or brand name or other term, symbol or content if there is an expressed connection with, or the approval or endorsement of a governmental, military or veteran entity or service organization.

A person, firm, corporation, or association that is a nongovernmental entity may solicit information, the purchase or payment for a product or service, or for contributions or membership fees by any means including mail, electronic transmission, Internet web site, periodical, or television commercial, using a seal, emblem, insignia, trade or brand name or other term, symbol or content if:

- The solicitation conspicuously includes a disclosure on the front and back page of each page of the solicitation that “This Product or Service Has Not been Approved or Endorsed by Any Governmental Agency, and This Offer Is Not Being Made By an Agency of the Government”
- If a mailed solicitation contains a disclosure on the outer wrapping or envelop that “This is Not a Government Document.”
- If a television commercial, displays at the top of the screen throughout the ad the disclosure “that “This Product or Service Has Not been Approved or Endorsed by Any Governmental Agency, and This Offer Is Not Being Made By an Agency of the Government”
- The solicitation does not use a title or brand or trade name implying a governmental connection, approval or endorsement
- Note: There are other related requirements. (SB 272)

Changes to Medical Privacy Laws (Amending Civil Code §§ 56.05, 56.104, 56.16, 1786.2, and 1798.91 and Enacting Civil Code §56.107; Amending Financial Code §4053; Amending Health and Safety Code §§ 1280.15, 1627, 117705, 117928, 120985, 121010, and 130201 and Enacting Health and Safety Code §1348.5; Amending Insurance Code §791.02 and Enacting Insurance Code §791.29; and Amending Labor Code §§ 3208.05, 3762, and 5406.6)

The intent of the Legislature in enacting this act is to incorporate HIPAA standards into state law and to clarify the standards for protecting the confidentiality of medical information in insurance transactions.

“Confidential communications request” is a request by a subscriber or enrollee that health care service plan communications containing medical information be communicated to him or her at a specific mail or email address or specific telephone number, as designated by the subscriber or enrollee.

“Endanger” means that the subscriber or enrollee fears that disclosure of his or her medical information could subject the subscriber or enrollee to harassment or abuse.

“Medical information” means any individually identifiable information, in electronic or physical form, in possession of or derived from a provider of health care, health care service plan, pharmaceutical company, or contractor regarding a patient’s medical history, mental or physical condition, or treatment. “Individually identifiable” means that the medical information includes or contains any element of personal identifying information sufficient to allow identification of the individual, such as the patient’s name, address, electronic mail address, telephone number, or social security number, or other information that, alone or in combination with other publicly available information, reveals the individual’s identity.

“Sensitive services” means all health care services described in Sections 6924, 6925, 6926, 6927, 6928, and 6929 of the Family Code, and Sections 121020 and 124260 of the Health and Safety Code, obtained by a patient at or above the minimum age specified for consenting to the service specified in the section. (this includes health care services that minors can consent to, including: mental health treatment or counseling services; residential shelter services; medical care related to the prevention or treatment of pregnancy, as specified; diagnosis or treatment related to infectious, contagious, or communicable disease; prevention of sexually transmitted diseases; and HIV services, obtained by the patient at or above the minimum age specified for consenting to the service specified.

Effective January 1, 2015, a health care service plan shall take the following steps to protect the confidentiality of a subscriber’s or enrollee’s medical information

(1) A health care service plan shall permit subscribers and enrollees to request, and shall accommodate requests for, communication in the form and format requested by the individual, if it is readily producible in the requested form and format, or at alternative locations, if the subscriber or enrollee clearly states either that the communication discloses medical information or provider name and address relating to receipt of sensitive services or that disclosure of all or part of the medical information or provider name and address could endanger the subscriber or enrollee.

(2) A health care service plan may require the subscriber or enrollee to make a request for a confidential communication in writing or by electronic transmission.

(3) A health care service plan may require that a confidential communications request contain a statement that the request pertains to either medical information related to the receipt of sensitive services or that disclosure of all or part of the medical information could endanger the subscriber or enrollee. The health care service plan shall not require an explanation as to the basis for a subscriber’s or enrollee’s statement that disclosure could endanger the subscriber or enrollee.

The request shall remain valid until revoked by the subscriber or enrollee or a new confidential communication request is submitted.

A confidential communications request shall be implemented by the health care service plan within seven calendar days of receipt of an electronic transmission or telephonic request or within 14 calendar days of receipt by first-class mail. The health care service plan shall

acknowledge receipt of the confidential communications request and advise the subscriber or enrollee of the status of implementation of the request if a subscriber or enrollee contacts the health care service plan.

A health care service plan shall not condition enrollment or coverage on the waiver of these rights.